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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re the Marriage of LISA JACKSON and DENNIS LUMPKIN.	B213370 (Los Angeles County Super. Ct. No. BD382998)
LISA M. JACKSON, Respondent, v. DENNIS LUMPKIN, Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County. Elizabeth R. Feffer, Judge. Affirmed in part and reversed in part with directions.

Law Offices of Amy Ghosh and Amy Ghosh for Appellant.

Stephen M. Martin for Respondent.

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In this marital dissolution case, Dennis Lumpkin appeals from a final judgment on reserved issues, challenging the division of community property and the award of attorney fees to Lisa Jackson. We conclude that the trial court erred in determining the net community value of a home on Citrus Drive in Palmdale (Citrus) and in mathematical calculations in the judgment, but in all other respects Lumpkin fails to establish any error or insufficiency of the evidence. Thus, we will direct the trial court to modify the judgment to account for the proper value of Citrus and the proper mathematical calculations.

BACKGROUND

Lumpkin and Jackson married in 1990 and separated on December 20, 2002. They have two daughters, whose custody and provisions for support are not at issue. Before separation, the couple acquired numerous parcels of real property, including a family residence on Remington Street in Lakeview Terrace (Remington), various homes and condominiums, including Citrus. Citrus was acquired by Lumpkin on December 2, 2002.

A status-only judgment was entered in April 2004. The remaining issues were determined in a bifurcated trial. After a partial trial held in March 2007, Commissioner Ann Dobbs announced her ruling that "each of these properties, Remington, . . . all of the properties . . . except properties purchased after date of separation are community. [¶] In Citrus there's a community component because it was purchased with a refinance from a community piece of property." As to property at 516 East Lancaster Boulevard, Dobbs determined that it was purchased after the date of separation, but "[t]here's a community component only to the extent of the down payment that came from the refinance of a community property. So there's a component that has to be determined by all of you with tracing."

In 2008, the remaining issues in the case were tried before Judge Elizabeth R. Feffer. The parties discussed Commissioner Dobbs's ruling with Judge Feffer, who stated, "The court is not going to issue any rulings that are inconsistent with the prior

court orders," and, "To the extent the court already ruled on it, it's done. This [trial] is just what is left."

The parties provided to Judge Feffer a portion of the transcript from the March 2007 trial before Commissioner Dobbs. The partial transcript, consisting of 14 pages, included Commissioner Dobbs's ruling but neither the evidence nor the parties' arguments. At the continuation of the trial before Judge Feffer in 2008, both Lumpkin and Jackson testified; the court also received documentary evidence from the parties. Lumpkin represented himself in the proceedings before Judge Feffer.

The parties stipulated that the equity value of Remington at the time of trial was $275,000. Without objection, Jackson testified to her opinion of the value of various parcels of community property as of the date of trial: (1) 9623 East Avenue Q12 in Littlerock (Littlerock) had a value of $187,000; (2) 44424 15th Street East, Unit 6, in Lancaster (15th St.) had a value of between $120,000 and $125,000; (3) 2260 East Avenue Q4, Unit 64, in Palmdale (East Avenue Q4) had a value of $225,000, with a Zillow listing (Zillow.com) of $197,000 and her appraiser's valuation at $225,000; (4) 40205 North Ronar Avenue in Palmdale (Ronar) had a value of between $222,000 and $225,000, based on her appraiser's evaluation and comparable properties listed on Zillow; (5) Citrus had a value of $230,500. According to Jackson's trial brief, filed on June 2, 2008, Jackson asserted that Citrus was "worth approximately $300,000."

Lumpkin testified that the value of 15th St. was $80,000; the value of East Avenue Q4 was $125,000. According to Lumpkin, Citrus was valued at between $140,000 to $150,000.

According to Jackson, Lumpkin purchased Citrus with a down payment of $34,500, funds which he obtained by refinancing two community properties, and with an initial loan of $111,000. Lumpkin refinanced Citrus and took out approximately $90,000, no part of which was received by Jackson.

Lumpkin claimed that at the time of trial he owed about $202,000 on Citrus and he had no equity in the property. Lumpkin lived in Citrus from December 2002 until June 2008, when he rented it. Citrus was listed for rent at a monthly rent of $1,900. At the

time of trial, Lumpkin had a tenant occupying Citrus and expected to sign a rental contract under "Section 8" in the near future.[1] Lumpkin expected that the contract would be for an amount of rent that would cover the monthly mortgage payment of about $1,400.

Jackson testified that Lumpkin sold a parcel of community property on Stanridge Avenue in Lancaster (Stanridge) in January 2006 and received net proceeds of $109,000, which were not shared with her.

According to Lumpkin's profit and loss statement for the period from October 2002 to September 2004, profits from the rental properties were $31,064.61. Although Lumpkin admitted to preparing the profit and loss statement and providing it to Jackson during discovery earlier in the proceeding, Lumpkin testified that the document was incomplete and did not include all transactions and all expenses. Lumpkin also asserted at trial that for each of the rental properties that were community property — Stanridge, Ronar, Littlerock, East Avenue Q4 and 15th St. — he made a profit of only $100 per month and maybe "$200 on a good month off of each one." According to Jackson and not contradicted by Lumpkin, all of the rental properties were rented under a Section 8 contract and Lumpkin received a steady stream of income from the properties.

Admitted into evidence at trial were some of Lumpkin's tax returns, income and expense declarations, and profit and loss statements. Jackson testified that, based on the documents provided by Lumpkin, Lumpkin's average monthly income from the rental properties was between $1,000 and $1,500. Jackson's attorney argued that these documents show that Lumpkin's profits from the rental properties from January 2003 to June 2008 were approximately $70,000.

The parties stipulated that the Remington property was to be awarded to Jackson and the Citrus property was to be awarded to Lumpkin.

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[1] Section 8 refers to the part of the United States Housing Act of 1937 that provides housing assistance for low-income families and now appears as title 42 United States Code section 1437f. (*Sabi v. Sterling* (2010) 183 Cal.App.4th 916, 922.)

Jackson testified that she had already paid approximately $9,000 in attorney fees and then owed approximately $30,000 in attorney fees.

The trial court issued its ruling on July 10, 2008. Pursuant to the parties' stipulation, the court awarded Remington to Jackson and Citrus to Lumpkin as their sole and separate properties. The court found the net community values of the properties to be $275,000 and $230,500, respectively.

Pursuant to *In re Marriage of Watts* (1985) 171 Cal.App.3d 366 (*Watts*), the court awarded Jackson a credit of $92,400, based on Lumpkin's occupancy of Citrus from January 1, 2003, to June 1, 2008, based on a fair rental value of $1,400 per month. The court found "that no evidence was presented as to value of *Watts* credits on the Remington property [occupied by Jackson], thus no such credits are awarded [to Lumpkin]."

The court divided the "net value" of each of the following four community properties equally between the parties: Littlerock, 15th St., Ronar, and East Avenue Q4. The judgment determined the "net value" of each of the four properties and provided that each party was entitled to one-half of the net value or to a specific amount corresponding to one-half of the net value as determined by the court. With respect to Stanridge, the court found that it was a community asset that Lumpkin sold in 2006, receiving net proceeds of $109,000; Jackson was entitled to half of that amount plus interest.

The court found that Lumpkin collected the rental income from the community properties after separation and that Jackson was entitled to one-half of the net rental income, or $31,807.14. Because Lumpkin refinanced various community properties and received funds which were not accounted for, Jackson was entitled to reimbursement for her share of those refinance proceeds. The court found that Lumpkin had taken out $90,000 from the equity in Citrus and that Jackson was entitled to $45,000. Jackson was also entitled to reimbursement for one-half of two community debts that she paid after the date of separation.

Based on the foregoing, the court calculated that Lumpkin owed Jackson a total of $397,688, representing half of the value of Citrus, *Watts* credits, reimbursements for

money withdrawn from the equity of community properties through refinancing, reimbursement for half of community debts paid by Jackson, and half of the sale proceeds from Stanridge. The court calculated that Jackson owed Lumpkin $137,500 for half of the equity in Remington. Thus, offsetting the amounts the parties owed to each other, Lumpkin owed Jackson $260,188. The judgment provided that the foregoing sum "can either be paid in cash or offset from values of four (4) remaining parcels of community real estate."

On the matter of attorney fees, the judgment stated, "The Court finds that the parties have incurred similar amounts in attorney's fees to date. While the assets awarded to the respective parties are roughly equal, [Lumpkin] has had the benefit of the rental income and refinance proceeds, while [Jackson] has not had similar benefits. On that basis the Court awards [Jackson] the sum of [$20,000] in attorney fees to be paid in four (4) monthly installments of [$5,000] . . . ."

Lumpkin appealed from the judgment.

DISCUSSION

Lumpkin asserts that Judge Feffer (1) failed to obtain and consider a complete transcript of the March 2007 trial and thus made determinations based on an incomplete and inadequate record, (2) exhibited bias and unfairness toward Lumpkin, (3) "overstepped her authority" by "recharacteriz[ing]" Citrus as entirely community property when Commissioner Dobbs found that it had only a "community component," (4) failed to value Citrus properly, (5) improperly determined the values of community properties based on "developed values" instead of "sales values," (6) incorrectly calculated rental income from the properties, (7) improperly awarded attorney fees to Jackson, and (8) made mathematical errors in the judgment. We agree with Lumpkin that the court erred in determining the net community value of Citrus and that the judgment contains some mathematical errors, but conclude that none of his other claims has merit.

A. Adequacy of Record and Judicial Bias

The record shows that the parties were well aware that Judge Feffer had only a partial transcript of the March 2007 trial. Lumpkin neither requested that a complete

March 2007 transcript be admitted into evidence nor that the court take judicial notice of the complete transcript. The record does not support Lumpkin's accusation that Judge Feffer had an incomplete and inadequate record, and he cites no authority for the proposition that the judge was obligated to seek out and obtain a complete transcript.

We also reject Lumpkin's contention that the trial judge showed bias and unfairness. Rather, our reading of the record shows that the trial judge extended every opportunity to Lumpkin to put on his case, to cross-examine Jackson, and to admit evidence. Granted, Jackson's counsel made numerous objections to Lumpkin's proffered exhibits, testimony, and questions of Jackson. The trial court sustained many of Jackson's objections. Lumpkin does not challenge any of these evidentiary rulings. He thus fails to establish any bias or unfairness. As it appears that Lumpkin's claims of bias or unfairness are also intended to challenge the sufficiency of the evidence supporting the valuations of the properties and the determination of the amount of rental income from the community properties, we proceed to address those challenges.

B. Citrus

Judge Feffer was aware of Commissioner Dobbs's ruling, which found a community property "component" or interest in Citrus but deferred any apportionment of Citrus between community and separate property interests. As pointed out by Jackson's attorney in closing argument before Judge Feffer, the down payment on Citrus was made with community funds and "there has been no evidence presented that [Citrus] is not 100 percent community. There has been no pay down on the original trust deed of $111,000. In the five years Mr. Lumpkin has essentially looted the property . . . he took out $205,000 . . . ." As the evidence did not show that Citrus was purchased or maintained with Lumpkin's separate funds, there was insufficient evidence to establish a separate component to Citrus. As pointed out in Jackson's brief, there was no evidence that Lumpkin increased the equity in Citrus after the date of separation, so Lumpkin had not "established a separate property 'component' in the property." Substantial evidence thus supports the trial court's finding that Citrus was entirely community property. This

finding is consistent with Commissioner Dobbs's earlier ruling, which deferred apportionment of Citrus.

Lumpkin asserts that there is insufficient evidence to support the trial court's valuations of Citrus because the court failed to deduct the encumbrances on Citrus, while it did deduct the trust deed encumbrance from the net community value of Remington.

As to Citrus, the court erred in finding "the net community value" to be $230,500. Jackson's opinion of Citrus was based on its market value and did not take into account any encumbrances. It was undisputed that the amount owing on Citrus at the time of trial was $202,000 because of Lumpkin's refinance of the property. (Part of that amount of refinance, $90,000, was taken out in cash by Lumpkin and not shared with Jackson, who was awarded $45,000 in addition to half of $230,500.) The evidence thus establishes that the total equity in Citrus ($230,500 minus encumbrances of $202,000) was $28,500. Jackson is entitled to half of $28,500, or $14,250.

Jackson's brief does not address the issues of the encumbrance on, and equity in, Citrus and the failure of the trial court to take these matters into account in calculating net community value. We conclude that the judgment should be modified to reflect $28,500 as the net community value of Citrus, with Jackson's share set at $14,250.

C. Valuation of the Properties

With respect to the trial court's determination of the values of the properties, Lumpkin asserts, without any support in the record, that the trial court improperly used "developed values" or cost approach, instead of sales values. The distinction raised by Lumpkin was not one established by the evidence at trial, where each party testified to an opinion of the current value of the properties. The trial court found Jackson's opinions as to value to be more credible. Lumpkin fails to establish any error or abuse of discretion with respect to the trial court's method of valuing the properties.

Lumpkin also asserts that the trial court erred in determining the net community value of the four community property rental properties (Littlerock, Ronar, 15th St., and East Avenue Q4) because the court adopted Jackson's opinions of the value of those properties without deducting the outstanding loans and trust deed balances. He argues

that "[n]ot one of these community properties was paid off completely" and cites portions of his testimony purporting to support this conclusion. But the portions of the record cited by Lumpkin fail to establish whether the four properties were encumbered at the time of trial, or if encumbered, the specific amount of any encumbrance. The trial court also reasonably rejected Lumpkin's claims regarding the community equity in the rental properties because there was no documentary evidence to support his claims that the properties were then encumbered. Lumpkin thus fails to establish that the court erred in valuing the four rental properties.

Lumpkin complains that the trial court failed to award him a share of the cash that Jackson allegedly withdrew from the equity in Remington. The judgment is silent on this point. But Lumpkin's trial briefs did not list this matter as an issue in dispute and insufficient evidence was admitted to establish the amount of cash Jackson withdrew and how she used any such funds. And Lumpkin stipulated that the net community value of Remington was $275,000. After the trial court delivered its ruling on the reserved issues in open court, Lumpkin did not inform the trial court that it had failed to resolve any disputed matter. Under these circumstances, Lumpkin fails to show any trial court error with respect to the matter of the funds that Jackson allegedly withdrew from the equity in Remington.

D. Rental Income

Lumpkin contends that the trial court improperly awarded to Jackson the rental income from a piece of property determined to be his separate property (516 East Lancaster Boulevard) as part of the court's award to her of rental income of $31,807.14, representing half of the net rental income. But nothing in the record establishes that the trial court included the rental income from 516 East Lancaster Boulevard in its rental income determination. In his reply brief, Lumpkin complains that it is unclear how Judge Feffer arrived at the rental income figure and that the amount "is totally incorrect." Lumpkin has the burden of showing error, and he has not done so because he has not shown that the evidence favorable to Jackson, including reasonable inferences therefrom,

does not support the trial court's determination that he received approximately $63,600 in net rents from the community properties from the date of separation to the date of trial.

E. Attorney Fees

According to the judgment, Jackson was awarded attorney fees in the sum of $20,000, notwithstanding her higher income, because Lumpkin "has had the benefit of the rental income and refinance proceeds, while [Jackson] has not had similar benefits." Lumpkin contends that the trial court abused its discretion in awarding Jackson attorney fees because he "had no clear financial advantage in this case, so Judge Feffer's decision was based on a false assumption." Lumpkin maintains that the trial court failed to consider Jackson's higher income and her refinance of Remington to take out cash of $105,000 after the date of separation and before trial.

An award of attorney fees and costs is within the sound discretion of the trial court, and in the absence of a clear showing of abuse, the award will not be disturbed on appeal. (*In re Marriage of Bower* (2002) 96 Cal.App.4th 893, 902.) The trial court's order will be overturned only if, considering all the evidence viewed most favorably in support of its order, no judge could reasonably have made the order. (*Ibid*.)

Where the fee award is not based on a specific Family Code section, the reviewing court may look to the record to determine the basis for the award. (*In re Marriage of Lucio* (2008) 161 Cal.App.4th 1068, 1082.) In *Lucio*, the trial court did not specify the statutory basis for its award of attorney fees, but the Court of Appeal determined that the "more reasonable interpretation" of the order was that the fees were awarded to one party as a sanction against the other, pursuant to Family Code section 271.[2] (*Lucio*, at

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[2] Family Code section 271 provides: "(a) Notwithstanding any other provision of this code, the court may base an award of attorney's fees and costs on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys. An award of attorney's fees and costs pursuant to this section is in the nature of a sanction. In making an award pursuant to this section, the court shall take into consideration all evidence concerning the parties' incomes, assets, and liabilities. The court shall not impose a sanction pursuant to

p. 1082.) "'[S]ection 271 sanctions have been upheld for "obstreperous conduct which frustrated the policy of the law in favor of settlement, and caused the costs of the litigation to greatly increase . . . ."' [Citation.]" (*Lucio, supra,* 161 Cal.App.4th at p. 1082.)

Substantial evidence supports the express findings of the trial court that Lumpkin had the use and benefit of the rental income and refinance proceeds without providing an accounting of them to Jackson and sharing the proceeds with her. Substantial evidence also supports the implied findings that Lumpkin frustrated the policy of the law and increased the costs of litigation by providing either incomplete financial records or conflicting documents as to many of the financial issues.

Jackson's attorney stated in closing argument that "everything in this case has been like pulling teeth. I had to take two days of deposition of Mr. Lumpkin. And these are not west side people. It would be ridiculous for them to spend $100,000 for their divorce. There has not been a single time where we could come down and discuss these issues intelligently and fairly. Everything is a fight and everything is the self-serving statements, these inabilities to recollect. Mr. Lumpkin can tell you who cooked breakfast in 2001 and where he slept in 2001, but he doesn't remember all kinds of things when it comes to values on property. [¶] . . . It's this constant disingenuous presentation that has really cost my client a lot of time, money, and aggravation."

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this section that imposes an unreasonable financial burden on the party against whom the sanction is imposed. In order to obtain an award under this section, the party requesting an award of attorney's fees and costs is not required to demonstrate any financial need for the award. [¶] (b) An award of attorney's fees and costs as a sanction pursuant to this section shall be imposed only after notice to the party against whom the sanction is proposed to be imposed and opportunity for that party to be heard. [¶] (c) An award of attorney's fees and costs as a sanction pursuant to this section is payable only from the property or income of the party against whom the sanction is imposed, except that the award may be against the sanctioned party's share of the community property."

In light of the instant record, Lumpkin fails to establish that the trial court's award of attorney fees to Jackson constituted an abuse of discretion under Family Code section 271.

F. Mathematical Errors

In paragraph 15 of the judgment, the court found that Lumpkin owed Jackson $282,438, representing the Citrus *Watts* credits ($92,400), half the rental income ($31,807.14), reimbursements for money withdrawn from equity of community properties ($45,000 plus $10,500 plus $17,500 plus $7,000, for a total of $80,000), the sale proceeds of the Stanridge property ($54,500), and reimbursement for half of community debts paid by Jackson ($5,280). But the foregoing amounts total only $263,987.14. The trial court found that Lumpkin also owed Jackson half the net value of Citrus, which we determine should be $14,250 instead of $115,250. Adding $14,250 to $263,987.14 results in a total of $278,237.14 (not the $397,688.00 in the judgment). The court also found Jackson owed Lumpkin $137,500 for half the net equity in Remington. When $137,500 is subtracted from the correct figure of $278,237.14, the result is $140,737.14. Accordingly, the correct net amount owed by Lumpkin under paragraph 15 of the judgment is $140,737.14.

DISPOSITION

Those parts of the October 30, 2008 Final Judgment on Reserved Issues (Judgment) determining the net community value of 37656 Citrus Drive in Palmdale, Lisa Jackson's share thereof, and the amounts owed by Dennis Lumpkin to Lisa Jackson as calculated in paragraph 15 of the Judgment are reversed and on remand the trial court is directed to (1) delete from paragraph 4 the amount of $230,500.00 and replace it with the amount of $28,500; (2) delete from paragraph 15 the amount of $115,250.00 and replace it with the amount of $14,250; (3) delete from paragraph 15 the amount of $282,438.00 and replace it with the amount of $263,987.14; (4) delete from paragraph 15 the amount of $397,688.00 and replace it with the amount of $278,237.14; (5) delete from paragraph 15 the amount of $260,188.00 and replace it with the amount of

$140,737.14. In all other respects, the judgment is affirmed. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

CHANEY, J.

JOHNSON, J.